

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-156609-06

Date:

April 23, 2007

Legend

Parent =

LLC1 =

Distributing =

Controlled =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Target =

Business A =

Business A1 =

Date 1 =

Regulatory Department =

a =

b =

c =

d =

Dear :

This letter responds to your December 11, 2006 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in the support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether Distribution 1 and Distribution 2 (defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are being used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal

Revenue Code of 1986, as amended (the “Code”) and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

Summary of Facts

Publicly traded Parent is the common parent of an affiliated group of corporations that file a consolidated return. Parent wholly owns Subsidiary 1, which wholly owns Subsidiary 2, which wholly owns Subsidiary 3, which wholly owns Subsidiary 4. Subsidiary 4 is engaged in Business A. Parent also owns all of the outstanding equity interests in LLC1, an entity that the taxpayer has represented is disregarded as separate from Parent for federal income tax purposes. LLC1 owns all of the outstanding stock of Distributing, a corporation that is engaged in Business A1. Distributing owns all of the outstanding stock (a single class of common stock) of Controlled, a corporation that is engaged in Business A. All of the above-described entities are domestic.

In year a, Subsidiary 3 acquired b% of the stock of Parent (the “Hook Stock”) from Parent in a transaction that was unrelated to the Proposed Transaction (defined below). Parent’s transfer of the Hook Stock to Subsidiary 3 was not tax motivated, but rather was the result of a recommendation from an advisor regarding a valid business purpose of Subsidiary 3. Subsidiary 3 continues to own the Hook Stock.

On Date 1, Target, a corporation unrelated to Parent, merged into LLC1 in a transaction that qualified as a reorganization under § 368(a) (the “Merger”). At the time of the Merger, Target had owned all of the stock of Distributing for the preceding five years, and Distributing had owned all of the stock of Controlled for the same five year period. Since the Merger, there have been no changes with respect to the Parent group’s ownership of Distributing and Controlled.

Financial information has been submitted which indicates that Business A (indirectly conducted by Parent via Subsidiary 4, and directly conducted by Controlled) and Business A1 (directly conducted by Distributing) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what are represented to be valid business reasons, management of Parent and its subsidiaries propose to undergo the following series of transactions (collectively, the “Proposed Transaction”):

Proposed Transaction

(i) Controlled will amend its corporate charter to provide for the issuance of no par value common stock divided into Class A shares (the “Class A Stock”) and Class B shares (the “Class B Stock”). The Class A Stock will have voting shares, which as a class, will represent c% of the total number of votes to be cast for the Board of Directors of Controlled. The Class B Stock will have voting shares, which as a class, will represent the remaining d% (an amount representing 80% or more) of the total number of votes to be cast for the Board of Directors of Controlled. Aside from the difference in voting rights, there will be no difference between the Class A Stock and the Class B Stock (together, the “New Controlled Stock”) with regard to dividends, liquidation, or any other rights, preferences, or limitations. Immediately thereafter, Distributing will exchange its Controlled common stock for all of the New Controlled Stock (the “Exchange”). The amendment to Controlled’s corporate charter and the Exchange are referred to together as the “Recapitalization.”

(ii) Distributing will transfer all of the New Controlled Stock to Parent in exchange for an amount of cash equal to the book value of the New Controlled Stock. Distributing will then immediately distribute the same amount of cash to LLC1 with respect to its stock, and LLC1 will immediately distribute the same amount of cash to Parent with respect to its membership interest. These steps are referred to together as “Distribution 1.” These formal steps are required for valid non-tax reasons, and in the absence of such requirement, would not be taken. Regulatory Department has conditioned their approval of the Proposed Transaction upon the occurrence of these formal steps.

(iii) Parent will distribute the Class B Stock to Subsidiary 3 in exchange for the Hook Stock (“Distribution 2”).

(iv) Parent will contribute the Class A Stock to Subsidiary 1. Subsidiary 1 will contribute the Class A Stock to Subsidiary 2, which in turn, will contribute it to Subsidiary 3. Each of the contributions described will be referred to singularly as a “Contribution” and collectively as “the Contributions.” In addition, each contributor and recipient of stock in a particular Contribution will be referred to as the “Transferor” and the “Transferee,” respectively.

Following the completion of the Proposed Transaction, Subsidiary 3 will wholly own Controlled and Controlled will remain as a member of Parent’s consolidated group.

Representations

The following representations have been submitted regarding certain steps of the Proposed Transaction:

The Recapitalization

(a) The Recapitalization will qualify as a nonrecognition transaction under § 368(a)(1)(E) or § 1036.

(b) There is no plan or intent to amend Controlled's corporate charter to alter the rights associated with the Class A Stock or Class B Stock.

Distribution 1

(c) Distributing and Controlled may have intercorporate open account balances at the time of Distribution 1. The balances arose in the ordinary course of business and facilitate central cash management within the group. Any intercorporate debt owed by Controlled to Distributing after Distribution 1 under the open account balances will not constitute stock or securities. Except for such balances, no other intercorporate indebtedness will exist between Distributing and Controlled at the time of, or after, Distribution 1.

(d) No part of the New Controlled Stock distributed in Distribution 1 will be received by Parent as a creditor, employee, or in any capacity other than as a shareholder of Distributing.

(e) Following Distribution 1, the Distributing separate affiliated group and the Controlled separate affiliated group will each continue the active conduct of their respective businesses.

(f) The five years of financial information submitted on behalf of the businesses conducted by Distributing (a member of the Distributing separate affiliated group) and by Controlled (a member of the Controlled separate affiliated group) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.

(g) Distribution 1 will be carried out to achieve capital and cash flow benefits to Parent's consolidated group, mitigate regulatory burdens, and achieve organizational and operational efficiencies and certain cost savings. Distribution 1 will be motivated, in whole or substantial part, by one or more of these corporate business purposes.

(h) Distribution 1 will not be used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.

(i) No assets or liabilities will be transferred by Distributing to Controlled (or vice versa) in connection with Distribution 1.

(j) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D.

8597, 1995-2 C.B. 147, and, as currently in effect, § 1.1502-13, as published by T.D. 8597).

(k) Distributing will not have an excess loss account with respect to its stock in Controlled.

(l) Payments made in connection with any continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) None of the New Controlled Stock will be "nonqualified preferred stock" (as defined in § 351(g)(2)).

(n) No two parties to the transaction will be investment companies (as defined in §§ 368(a)(2)(F)(iii) and (iv)).

(o) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50% or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8) and by application of § 1.355-6(b)(2)(iii)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

(p) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50% or more of the total value of shares of all classes of Controlled stock that was either: (i) acquired by purchase (as defined in § 355(d)(5) and (8) and by application of § 1.355-6(b)(2)(iii)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

(q) Distribution 1 will not be part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire by purchase directly or indirectly stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled.

(r) Immediately after Distribution 1, either (1) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled; (2) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction; or (3)

Distributing and Controlled will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Distribution 2

(s) Parent and Controlled may have intercorporate open account balances at the time of Distribution 2. The balances arose in the ordinary course of business and facilitate central cash management within the group. Any intercorporate debt owed by Controlled to Parent after Distribution 2 under the open account balances will not constitute stock or securities. Except for such balances, no other intercorporate debt will exist between Parent and Controlled at the time of, or after, Distribution 2.

(t) The fair market value of the Class B Stock received by Subsidiary 3 will approximately equal the fair market value of the Parent stock surrendered by Subsidiary 3 in Distribution 2.

(u) No part of the Class B Stock distributed in Distribution 2 will be received by Subsidiary 3 as a creditor, employee, or in any capacity other than as a shareholder of Parent.

(v) Following Distribution 2, Parent (through Subsidiary 4) and Controlled will each continue the active conduct of its business independently.

(w) The five years of financial information submitted on behalf of the businesses conducted by Controlled (a member of the Controlled separate affiliated group) and by Subsidiary 4 (a member of the Parent separate affiliated group) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted. Subsidiary 4 is, and immediately after Distribution 2 will be, affiliated with Parent in a manner that satisfies § 1504(a), without regard to § 1504(b).

(x) Distribution 2 will be carried out to achieve capital and cash flow benefits to the Parent consolidated group, mitigate regulatory burdens, and achieve organizational and operational efficiencies and certain cost savings. Distribution 2 will be motivated, in whole or substantial part, by one or more of these corporate business purposes.

(y) Distribution 2 will not be used principally as a device for the distribution of the earnings and profits of Parent, Controlled, or both.

(z) No assets or liabilities will be transferred by Parent to Controlled (or vice versa) in connection with Distribution 2.

(aa) There is no plan or intention by Subsidiary 3 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in Controlled after Distribution 2.

(bb) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as currently in effect, § 1.1502-13, as published in T.D. 8597).

(cc) Parent will not have an excess loss account with respect to its stock in Controlled.

(dd) Payments made in connection with any continuing transactions between Parent and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.

(ee) None of the New Controlled Stock will be "nonqualified preferred stock" (as defined in §351(g)(2)).

(ff) No two parties to the transaction will be investment companies (as defined in § 368(a)(2)(F)(iii) and (iv)).

(gg) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of stock in Parent entitled to vote or 50% or more of the total value of shares of all classes of stock in Parent that was acquired by purchase (as defined in § 355(d)(5) and (8) and by application of § 1.355-6(b)(2)(iii)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.

(hh) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50% or more of the total value of shares of all classes of Controlled stock that was either: (i) acquired by purchase (as defined in § 355(d)(5) and (8) and by application of § 1.355-6(b)(2)(iii)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2, or (ii) attributable to distributions on stock of Parent that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.

(ii) Distribution 2 will not be part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire by purchase directly or indirectly stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Parent or Controlled.

(jj) Immediately after Distribution 2, either (1) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Controlled or Parent; (2) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any

disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction; or (3) Controlled and Parent will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

The Contributions

(kk) The Class A Stock will be the only asset that will be transferred by a Transferor to a Transferee in a particular Contribution.

(ll) No property (other than possibly Transferee stock) will be transferred by a Transferee to a Transferor in a particular Contribution.

(mm) No stock or securities will be issued for services rendered to or for the benefit of the Transferee in connection with any of the Contributions.

(nn) No stock or securities will be issued for Transferee's indebtedness or for interest on Transferee's indebtedness which accrued on or after the beginning of the holding period of the Transferee for the debt.

(oo) None of the Contributions will be the result of solicitation by a promoter, broker, or investment house.

(pp) The Transferor will not retain any rights in the Class A Stock transferred to the Transferee.

(qq) No liabilities (fixed or contingent) of a Transferor will be assumed by a Transferee in connection with any Contribution.

(rr) No Transferee will take the Class A Stock subject to any liabilities of the Transferor.

(ss) There will be no indebtedness between a Transferee and a Transferor, and no indebtedness will be created in favor of a Transferor as a result of any of the Contributions.

(tt) The Contributions will occur pursuant to a plan agreed upon before the transaction in which the rights of the parties are defined.

(uu) There will be no plan or intention on the part of a Transferee to redeem or otherwise reacquire any of its stock that may be issued in a Contribution.

(vv) Taking into account any deemed or actual issuance of shares of Transferee stock; any issuance of stock for services; the exercise of any Transferee stock rights, warrants, or subscriptions; a public offering of Transferee stock; and the sale, exchange, transfer by gift, or other dispositions of any of the stock of the Transferee to

be received in the exchange, the Transferor will be in control of the Transferee within the meaning of § 368(c).

(ww) The Transferor will receive (or be deemed to receive) stock in the Transferee approximately equal to the fair market value of the property transferred to the Transferee.

(xx) Each Transferee will remain in existence and retain the Class A Stock (with the exception of the additional contributions of the Class A Stock as described in step (iv) above).

(yy) Each Transferor and Transferee will pay its own expenses, if any, incurred in connection with their respective Contribution.

(zz) None of the Transferees will be an “investment company” within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(aaa) None of the Transferors are under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)).

(bbb) None of the stock in a Transferee received (or deemed to be received) by a Transferor will be used to satisfy that Transferor’s indebtedness.

(ccc) None of the Transferees will be a “personal service corporation” within the meaning of § 269A.

(ddd) Immediately following a particular Contribution, the fair market value of the assets of the Transferee will exceed the sum of that Transferee’s liabilities.

(eee) Immediately prior to any Contribution, the fair market value of Controlled’s assets will exceed the sum of Controlled’s liabilities.

(fff) There will be no plan or intention for any of the Class A Stock to become subject to any liability.

(ggg) The Class A Stock will be a “capital asset” (as defined in § 1221) in the hands of each Transferee.

(hhh) The Class A Stock will not be “§ 306 stock” within the meaning of § 306(c).

(iii) The fair market value of the assets transferred to each Transferee will exceed the Transferor’s aggregate tax basis in those assets immediately before the transfer.

(jjj) All exchanges in connection with the Contributions will occur on approximately the same date.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the following steps of the Proposed Transaction:

Distribution 1

- (1) No gain or loss will be recognized by Distributing in Distribution 1 (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Parent in Distribution 1 (§ 355(a)).
- (3) The holding period of the New Controlled Stock received by Parent in Distribution 1 will include the holding period of the Distributing stock on which Distribution 1 is made (§ 1223(1)).
- (4) As provided in § 312(h), following Distribution 1, proper allocation of earnings and profits will be made between Distributing and Controlled in accordance with § 1.312-10.

Distribution 2

- (5) No gain or loss will be recognized by Parent in Distribution 2 (§ 355(c)).
- (6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Subsidiary 3 in Distribution 2 (§ 355(a)).
- (7) The aggregate basis of the Class B Stock in the hands of Subsidiary 3 immediately after Distribution 2 will be the same as the adjusted basis of the Hook Stock surrendered by Subsidiary 3 (§ 358(a)).
- (8) The holding period of the Class B Stock received by Subsidiary 3 will include Subsidiary 3's holding period in the Hook Stock on which Distribution 2 will be made (§ 1223(1)).
- (9) No adjustment will be made to the earnings and profits of Parent due to Distribution 2.

The Contributions

- (10) No gain or loss will be recognized by any of the Transferors on its transfer of the Class A Stock to a Transferee in constructive exchange for Transferee stock in the Contributions (§ 351).

(11) No gain or loss will be recognized by any of the Transferees on the receipt of the Class A Stock from a Transferor in constructive exchange for Transferee stock in the Contributions (§ 1032).

(12) The basis of each Transferor's stock in a Transferee will be increased by the Transferor's basis of the Class A Stock transferred to the Transferee in the Contribution (§ 358).

(13) The basis of the Class A Stock in the hands of each Transferee will equal the basis of that stock in the hands of the Transferee's respective Transferor immediately prior to its transfer (§ 362).

(14) The holding period of the Class A Stock in the hands of each Transferee will include the holding period that the Transferee's respective Transferor had in the stock (§ 1223(2)).

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

In particular, we express no opinion regarding:

(i) Whether Distribution 1 and Distribution 2 will satisfy the business purpose requirement of § 1.355-2(b);

(ii) Whether Distribution 1 and Distribution 2 are being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether Distribution 1 and Distribution 2 are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7); and

(iv) The federal income tax treatment of the Recapitalization.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)